

No. 741 344 59.

Brief of Rose and Rose for D. C. Co.

Filed Feb. 10, 1896.

741

In the Supreme Court of the United States.

MARGARETE A. MUSE, Plaintiff in Error.

v.

THE ARLINGTON HOTEL CO., Defendant in Error.

Brief for Defendant on Motion to Dismiss.

In the way of compliance with rule 6, nothing further is necessary than to refer to section 1,000 of the Revised Statutes of the United States referred to in the motion.

Respectfully,

U. M. ROSE,

G. B. ROSE,

*For Defendant in Error.*

Nº. 341 59.

Brief of Rose v Rose for D. C.

Filed <sup>IN THE</sup> Apr. 17, 1897.  
Supreme Court of the United States.

OCTOBER TERM, 1896.

MARGARET A. MUSE ET AL., *Plaintiffs in Error*, U. S.

v.

No. 341.

APR 17 1897

ARLINGTON HOTEL COMPANY, *W. McKENNEY,*

CLERK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
EASTERN DISTRICT OF ARKANSAS.

Brief for Defendant on Motion to Dismiss  
or Affirm.

Ejectment on a pretended Spanish grant dating from 1788. Complaint dismissed on demurrer because it showed no cause of action. Plaintiffs sued out a writ of error to *this court*.

The pending motion is to dismiss the writ of error for want of jurisdiction in this court; or else to affirm because of the frivolous character of the matters presented for consideration.

I.

The only possible ground of jurisdiction in this case is to be found in the fifth subdivision of section 5 of the Appellate Courts Act :

"In any case in which \* \* \* the *validity or construction* of any treaty made under its authority is drawn in question."

Neither the validity or the construction of the treaty of cession of the Territory of Louisiana was involved in the decision below ; which was to the effect that the title of the plaintiffs failed on account of noncompliance with Spanish laws.

Gill v. Oliver, 11 How., 529.

The treaty was before the court "as a fact only, and not for the purpose of construction."

Williams v. Oliver, 12 How., 122.

Millingar v. Hartuppee, 6 Wall, 259.

Baltimore R. Co. v. Hopkins, 130 U. S., 225.

U. S. v. Lynch, 137 id., 280.

South Carolina v. Seymour, 153 id., 353.

II.

On the proposition to affirm it may not be amiss to quote the Arkansas statute relative to proceedings in ejectment.

"Sec. 2578. In all actions for the recovery of lands, except in actions of forcible entry and unlawful detainer, the plaintiff shall set forth in his complaint all deeds and other written evidences of title on which he relies

for the maintenance of his suit, and shall file copies of the same as far as they can be obtained, as exhibits therewith, and shall state such facts as shall show a *prima facie* title in himself to the land in controversy, and the defendant in his answer shall plead in the same manner as above required from the plaintiff.

“Sec. 2579. The defendant in his answer shall set forth exceptions to any of said documentary evidence relied on by the plaintiff to which he may wish to object, which exceptions shall specifically note the objections taken, and the plaintiff shall in like manner, within three days after the filing of the answer, unless longer time is given by the court, file like exceptions to any documentary evidence exhibited by the defendant, and all such exceptions shall be passed on by the court, and shall be sustained or overruled, as the law may require; and if any exception is sustained to any such evidence the same shall not be used on the trial, unless the defect for which the exception is taken shall be cured by amendment.

“Sec. 2580. All objections to such evidences not specifically pointed out in the manner provided above shall be waived.

“Sec. 2581. To entitle the plaintiff to recover, it shall be sufficient for him to show that at the time of the commencement of the action, the defendant was in possession of the premises claimed, and that the plaintiff had title thereto, or had the right to the possession thereof.”

Digest of Statutes, 1894.

The proceeding is thus assimilated to a suit in chancery to quiet title, the parties being required to play with an open hand.

The plaintiffs relied solely on a paper title ; and, as that showed no right in them, the complaint was subject to demurrer.

*Fagg v. Martin*, 53 Ark., 453.

A full account of this claim, and of others of the same sort, will be found in a letter of Isaac T. Preston, 5 Am. State Papers, 338.

This may properly be referred to.

*Watkins v. Holman*, 16 Pet., 50.

*Bryan v. Forsyth*, 19 How., 334.

The opinion of the court below does not profess to be exhaustive ; but it suffices ; and no additional suggestions seem to be needed in order to show the preposterous anachronism of this aged and more than secular claim.

True the papers are said to have been lost for some time in an old trunk, where they seemed to rest in a state of suspended animation ; but such incidents appear to be customary in cases of this sort.

*U. S. v. Castellero*, 2 Black, 185.

Respectfully,

U. M. ROSE,

W. E. HEMINGWAY,

G. B. ROSE,

*For Defendant in Error.*